IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 278 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SHAH JAYANTILAL PURSHOTTAMDAS

Appearance:

1. Criminal Appeal No. 278 of 1991

MR BY MANKAD, ADDL. PUBLIC PROSECUTOR for Petitioner No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 08/08/2001

ORAL JUDGEMENT

Though served no one appears for the respondents.

The State of Gujarat has filed this appeal under Section 11 of the Probation of Offenders Act, against the

judgement and order dated 15.12.1990 passed by the learned Judicial Magistrate First Class, Sabarkantha at Himatnagar in Criminal Case No. 1261 of 1986, whereby the learned Magistrate gave benefit of probation to the respondent accused No.1.

It appears from the judgement of the learned Magistrate that he was persuaded to take that view, in view of the fact that it was a first offence committed by the accused and he was a small trader and he was an old man aged about 60 years at the time of commission of the offence, which is alleged to have been committed in the year 1986. The accused assured the Court that he will not commit such offence again and that since 31st May, 1986 till the date of 1990 he was regularly attending the Court.

There is a lot of force in the submission made by the learned APP Shri Mankad for Sate of Gujarat that the learned Magistrate could not have granted benefit of probation to the accused who is charged for the offence under the Prevention of Food Adulteration Act and found guilty. If this appeal of 1991 was heard immediately, then perhaps this Court would have interfered with the order of probation, but after lapse of more than 15 years from the commission of the offence and almost ten years in hearing and deciding the appeal, I am not inclined to interfere with the impugned order passed by the learned Magistrate because as per the order of the learned Magistrate, the accused was 60 years in 1986. Today in 2001 he would be around 75 years old. Nothing has come on record that he has indulged in similar activity after he was given benefit of probation or any similar type of offence was registered against him. The period of probation was also over and during that period also he had not committed any breach of the conditions imposed by the learned Magistrate.

In that view of the matter, though I do not agree with the view taken by the learned Magistrate, after so many years I do not intend to interfere with the impugned order of probation in this appeal.

In view of the above discussion, this appeal fails and is dismissed.

(B.J.Shethna, J.)

*/Mohandas